

VZCZCXRO3477
OO RUEHDBU RUEHGA RUEHHA RUEHPW RUEHQU RUEHVC
DE RUEHOT #2073 3132201
ZNY CCCCC ZZH
O 092201Z NOV 07
FM AMEMBASSY OTTAWA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6891
INFO RUCNAFG/AFGHANISTAN COLLECTIVE PRIORITY
RUCNCAN/ALL CANADIAN POSTS COLLECTIVE PRIORITY
RUEHBUL/AMEMBASSY KABUL PRIORITY 0140
RUEKJCS/JOINT STAFF WASHDC PRIORITY
RUEKDIA/DIA WASHDC PRIORITY
RHEHNSC/WHITE HOUSE NSC WASHINGTON DC PRIORITY

C O N F I D E N T I A L OTTAWA 002073

SIPDIS

SIPDIS

E.O. 12958: DECL: 11/09/2017

TAGS: [PHUM](#) [NATO](#) [AG](#) [CA](#)

SUBJECT: NEW CHALLENGES TO CANADA'S AFGHAN DETAINEE POLICY

Classified By: PolMinCouns Scott Bellard, reasons 1.4 (b) and (d)

¶1. (C) Summary: According to Canadian officials, the government soon will face new legal and political challenges to its practice of conveying detainees to Afghan authorities. Official documents that the Canadian federal court has compelled the government to convey to opponents of the policy will probably appear in the public domain, perhaps during the week of November 12. Government officials have redacted passages of the documents to prevent harm to Canada's NATO allies, but the courts might still ultimately order the release of these passages. End Summary.

¶2. (C) On November 9, Department of Foreign Affairs and Trade (DFAIT) Afghanistan Task Force Director General Cindy Termorshuizen told diplomats representing the U.S., UK, Netherlands, and Denmark that, shortly after November 14, the Government of Canada would face concerted new political and legal challenges to its practice of conveying detainees captured in Afghanistan to Afghan authorities. Termorshuizen explained that the federal court had ordered the government to make relevant internal reports and deliberative documents available to counsel representing groups opposed to the practice.

¶3. (C) The redacted documents are not meant for public consumption, she noted, but the government assumes that opposing counsel will cherry-pick and share the most damning passages directly with sympathetic journalists. Government officials are now debating internally whether pre-emptively instead to make the entire collection available on a public website, she explained.

¶4. (C) Termorshuizen emphasized that there was nothing in the documents "at this time" to reflect badly on Canada's NATO partners. The Governments of Canada and Afghanistan do not fare so well, she commented, in part because the date range ends in July 2007, just before Canada renegotiated its detainee transfer agreement with Afghanistan, began deploying corrections experts to Kabul and Kandahar, and took other strong measures to begin building a culture of respect for human rights in Afghan detention centers.

¶5. (C) Termorshuizen admitted that there was information and opinion in the documents that potentially could reflect badly on other NATO members, but stressed that DFAIT had redacted such portions by citing to the court the damage its release would cause to Canadian foreign policy interests. However, she acknowledged that, ultimately, it would be up to the Attorney General and Canada's courts to decide what information would remain redacted.

Background

¶6. (C) In February 2007, Amnesty International (AI) and the British Columbia Civil Liberties Association (BCCLA) filed suit in the Canadian Federal Court seeking a writ of prohibition "preventing Canadian Forces (CF) in Afghanistan from transferring detainees to the Afghan authorities or any other state that was likely to torture them, including the United States." AI and the BCCLA argued that the CF practice of handing over detainees to the Afghan authorities under the Canada-Afghanistan Detainee Agreement violated the Canadian Charter of Rights and Freedoms (Charter) and Article 3 of the UN convention against torture, which states that parties will not "expel, return or extradite" a person to another state where he will be subjected to torture.
Qwhere he will be subjected to torture.

¶7. (C) The government countered that the Court had no standing because the Charter does not apply to non-Canadians outside Canada and that, pursuant to the UN Convention, Canadian authorities in Afghanistan do not "expel, return or extradite" persons to another country when they hand detainees captured in Afghanistan over to Afghan authorities. The government's argument convinced the judge hearing the case to permit the handover of detainees to continue while the case progresses. Termorshuizen predicted nonetheless that opposing counsel will use the forthcoming load of information to take another shot at getting the judge to issue a writ that would stop the practice until the case is finally decided.

Visit our shared North American Partnership blog (Canada & Mexico) at <http://www.intelink.gov/communities/state/nap>

WILKINS